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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/889,227	01/08/2002	Bernd Riedl	BAYER 15(1)	5714
23599	7590	06/22/2005	EXAMINER	
MILLEN, WHITE, ZELANO & BRANIGAN, P.C. 2200 CLARENDON BLVD. SUITE 1400 ARLINGTON, VA 22201			DESAI, RITA J	
		ART UNIT	PAPER NUMBER	
		1625		

DATE MAILED: 06/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/889,227	RIEDL ET AL
	<b>Examiner</b>	<b>Art Unit</b>
	Rita J. Desai	1625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 21 April 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,3,4,6-27,33-40,44,48-50,53,55,58,61,62,64,65,67-71 and 73-84 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,3,4,6-27,33-40,44,48-50,53,55,58,61,62,64,65,67-71,73-84 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

**Claims pending 1, 3, 4, 6-27, 33-40,44, 48-50, 53, 55, 58, 61, 62, 64, 65, 67-71, 73-84.**

The claims have not been amended to the elected group . The elected group has a tert-butyl group or a trifluoromethyl group on the “B” phenyl.

Applicants request to expand the elected group has been denied. Applicants arguments that it is not burdensome is not correct. Applicants core with the various A values is in itself a burdensome search.

*Also applicants still have in their definition RaRb forming a ring with L'. This would make the L1 ring other than a Phenyl, Pyridinyl or a Pyrimidinyl and hence make it outside the scope of the elected group.*

The rejection of claims 1, 38 ,39 under 35 USC 112 has been withdrawn since applicants have amended the claims to the specific hetero groups.

WO 9932463 is not *prior* art for the instant application.

Applicants discussion of the co-pending applications has been noted.

Applicants clearly indicate that some of these have the claimed scope encompassed in it. If the claims are allowed , a terminal disclaimer would be required on these application.

Hence the provisional double patenting rejection on claims 1, 3, 4, 6-27, 33-40,44, 48-50, 53, 55, 58, 61, 62, 64, 65, 67-71, 73-84 still stands.

### New Grounds of Rejection

#### *Claim Rejections - 35 USC § 112*

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 62, 64, 65, 67 and 84 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The specifications have no data that these compounds indeed can treat cancerous cell growth.

Furthermore cancerous cells have different receptor sites and hence all cannot be treated by the same compounds. Applicants specifications do not have any description nor any data to support that the compounds do treat cancerous cell growth or that they have an umbrella efficacy to treat any and all cancerous cells.

There is very little predictability in the art that compounds can treat all the cancerous cells.

The substitutions on the compounds are so varied , that in itself would make it impossible to treat the various cancers. Even a methyl V's a hydrogen makes a difference in the properties, for e.g. theophylline and caffeine differ only in one having a methyl group instead of a hydrogen and yet the properties are different.

The state of the art indicates that one drug cannot treat or is effective in treating many cancerous.

Thus there is no description nor any guidance that these would be able to treat any and all cancerous cell growth.

### ***Conclusion***

The claims are not allowable.

The claims , limited to the elected group are allowable over the prior art sine none of the prior art compounds have the CORx substituent on the L', phenyl, pyridinyl or pyrimidinyl and applicants compounds have to have it and there is no motivation to modify the compounds to add the amido substituent..

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rita J. Desai whose telephone number is 571-272-0684. The examiner can normally be reached on Monday - Friday, 9:30 am to 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cecilia Tsang can be reached on 571-272-0562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 1625

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Rita J. Desai  
Primary Examiner  
Art Unit 1625

R.D.  
June 17, 2005

  
6/20/05